

REMARKS

This application has been carefully considered in connection with the Examiner's Action. Reconsideration and allowance are respectfully requested in view of the following.

I. Interview Summary

The undersigned kindly thanks both Examiner Gates and Examiner Henderson for the personal interview courteously granted on July 11, 2006. While no agreement was reached, the efforts of both Examiner Gates and Examiner Henderson in attempting to find language which would patentably distinguish the claims over the cited art are sincerely appreciated.

II. Scope of the Present Amendment

Claims 17-20, 23-26, 28-36 and 38-41 were examined in the Office Action dated April 20, 2006. Of the foregoing, Claims 31, 39, 40 and 41 have been amended to address the Examiner's rejection under 35 U.S.C. § 112, second paragraph. Claim 20 has been amended to correct an inconsistency in the language of the preamble used by the Applicant. Finally, new Claim 42, which is directed to the same general subject matter as pending Claims 17-20, 23-26, 28-36 and 38-41 but does not contain any limitations other than those previously recited in the pending claims, has been added.

III. The Rejection of Claims 40 and 41 under the Second Paragraph of Section 112

Claims 40-41 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter regarded as the invention. In response, the Applicant has carefully reviewed the claims and amended Claims 31, 39, 40 and 41 so that all of the claims pending before the Examiner enjoy proper antecedent basis. Accordingly, the Applicant respectfully requests the reconsideration and withdrawal of the

rejection under the second paragraph of Section 112.

IV. The Rejection of Claims 17-20, 23-26, 28-36 and 38-41 as unpatentable over the cited art

Claims 17, 23-26, 31-36 and 40-41 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication 2002/0067037 to Lo in view of U.S. Patent No. 5,957,693 to Panec. Claims 18-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lo in view of Panec and further in view of U.S. Patent No. 4,149,738 to Illos et al. Finally, Claims 28-30 and 38-39 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lo in view of Panec and further in view of U.S. Patent No. 5,651,678 to Phillips. In response, the Applicant respectfully traverses the various rejections of Claims 17-20, 23-26, 28-36 and 38-41 and requests the withdrawal of each and every ground of rejection of these claims in view of the following.

It is well established that a claim is presumed allowable until the Examiner has established a *prima facie* case of obviousness of that claim. Only then must the Applicant set forth reasons patentably distinguishing the claimed invention over the prior art. In the present application, it is submitted that the Examiner has failed to establish a *prima facie* case of obviousness for Claims 17-20, 23-26, 28-36 and 38-41. Accordingly, the Applicant respectfully requests the withdrawal of the various rejections of Claims 17-20, 23-26, 28-36 and 38-41.

35 U.S.C. § 102(e) allows for certain prior art references, including U.S. patent publications, to be applied against the claims of an application as of their effective filing date. For references not claiming the benefit of an international application, the 35 U.S.C. § 102(e) date is its earliest effective U.S. filing date, taking into consideration any **proper** benefit claims to prior U.S. applications under 35 U.S.C. § 119(e) or 120. In the Office Action dated April 20, 2006, the

Examiner relied upon Lo as the primary reference and applied Lo against all of the pending claims. Upon review, however, it was noted that Lo cannot properly be applied against the claims of this application. Accordingly, the Applicant respectfully requests the reconsideration and withdrawal of those rejections which rely upon Lo.

More specifically, the present application was accorded a filing date of December 22, 2000. As Lo was published on June 6, 2002, Lo is unavailable as a reference under 35 U.S.C. § 102(a) or 102(b) and can only be applied against the claims of the present application under 35 U.S.C. § 102(e). In this regard, while Lo's filing date of October 4, 2001 is well after Applicant's filing date, the publication to Lo includes a claim for priority based upon U.S. Provisional Application No. 60/235,348 filed on September 26, 2000. While Lo's claim for priority extends back to a date prior to Applicant's December 22, 2000 filing date, it is respectfully submitted that Lo's priority claim is improper and, as a result, prevents Lo from being applied against the claims of the present application. More specifically, it is noted that the filing date of the provisional application is September 26, 2000 while the filing data of the non-provisional application is October 4, 2001. As the non-provisional application was filed more than one year **after** the filing date of the provisional application on which Lo asserts a claim for priority, Lo is not entitled to the benefit of the September 26, 2000 filing date and, as a result, the effective date of Lo becomes October 4, 2001. Accordingly, as the effective date of Lo is after the filing date of the present application, Lo may not be used in a rejection of the claims of the present application.

As Lo is the primary reference applied by the Examiner against Claims 17-20, 23-26, 28-36 and 38-41, absent the availability of Lo as a reference, the Examiner has clearly failed to establish a *prima facie* case of obviousness against the claims. Accordingly, the Applicant respectfully

requests the withdrawal of the various rejections of Claims 17-20, 23-26, 28-36 and 38-41, all of which rely upon a combination of references that includes Lo. Finally, the Applicant requests that, in the absence of a *prima facie* case of obviousness, the application be allowed to proceed to issue without further delay.

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Respectfully submitted,



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